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SEP 04 2008

In re Application of :  
Ausborn et al. :  
Application Number: 10/506822 : DECISION ON PETITION  
Filing Date: 09/07/2004 :  
Attorney Docket Number: DV/4- :  
32408A :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on July 17, 2008, to revive the above-identified application.

The petition is GRANTED.

This application became abandoned on March 21, 2007, for failure to file a timely reply to the non-final Office action mailed on December 20, 2007, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on August 7, 2008.

Petitioner requests that the application be revived for copendency with a subsequently filed continuing application. A

<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

review of Office PALM records reveals that continuing Application No. 12/218,639 was filed on July 17, 2008.

Since this application is revived for purposes of continuity only with continuing Application No. 12/218,639, filed on July 17, 2008, and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of the above-referenced application.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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Office of Petitions